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HOUSE BILL 814

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

James G. Taylor

AN ACT

RELATING TO CRIMINAL LAW; ENACTING THE GANG ENFORCEMENT AND PREVENTION ACT; PROVIDING CRIMINAL PENALTIES FOR INDUCING MINORS TO PARTICIPATE IN A PATTERN OF CRIMINAL GANG ACTIVITY; PROVIDING CRIMINAL PENALTIES FOR PARTICIPATING IN A PATTERN OF CRIMINAL GANG ACTIVITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Criminal Code is enacted to read:

" NEW MATERIAL SHORT TITLE. -- This act may be cited as the "Gang Enforcement and Prevention Act". "

Section 2. A new section of the Criminal Code is enacted to read:

" NEW MATERIAL FINDINGS AND PURPOSE. --

A. The legislature finds and declares that it is

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1 the right of every person to be secure and protected from
2 intimidation and physical harm caused by the criminal
3 activities of violent groups and individuals. The legislature
4 also finds that the citizens of New Mexico are concerned about
5 the increase in criminal activity that can be attributed to
6 criminal gangs. This criminal activity presents a clear and
7 present danger to public safety and is not the type of
8 activity that is protected by the United States constitution
9 or the constitution of New Mexico.

10 B. The purpose of the Gang Enforcement and
11 Prevention Act is not to interfere with constitutionally
12 protected rights of freedom of speech and freedom of
13 association. Rather, the purpose of the Gang Enforcement and
14 Prevention Act is to deter and punish criminal activity
15 engaged in by criminal gangs. "

16 Section 3. A new section of the Criminal Code is enacted
17 to read:

18 "[NEW MATERIAL] DEFINITIONS. --As used in the Gang
19 Enforcement and Prevention Act:

20 A. "criminal gang" means an organization,
21 association or group of three or more persons:

22 (1) that has a common name or a common
23 identifying sign or symbol; and

24 (2) whose members engage in a pattern of
25 criminal gang activity;

1 B. "criminal gang member" means any person
2 identified by a bona fide law enforcement or correctional
3 agency as meeting one of the following criteria:

4 (1) the person admits he is a member of a
5 gang;

6 (2) a reliable informant identifies the
7 person as a gang member;

8 (3) an informant of untested reliability
9 identifies a person as a gang member and the identification is
10 independently corroborated; or

11 (4) a person resides in or frequents a
12 particular gang's area or affects their style of dress, use of
13 hand signs, symbols or tattoos, or maintains ongoing
14 relationships with known gang members, and law enforcement
15 officers documents reasonable suspicion that the person is
16 involved in a gang-related activity or enterprise;

17 C. "criminal gang-related" means a crime
18 enumerated in Subsection D of this section that is committed
19 by a person while aiding or abetting a member or members of a
20 criminal gang; and

21 D. "pattern of criminal gang activity" means
22 convictions for the commission of two or more of the following
23 criminal offenses; provided that at least one of the
24 convictions occurs within three years of a prior conviction;
25 and provided further that the convictions are obtained against

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- 1 two or more members of the same criminal gang:
- 2 (1) murder in the first degree, as provided
- 3 in Subsection A of Section 30-2-1 NMSA 1978;
- 4 (2) murder in the second degree, as provided
- 5 in Subsection B of Section 30-2-1 NMSA 1978;
- 6 (3) voluntary manslaughter, as provided in
- 7 Subsection A of Section 30-2-3 NMSA 1978;
- 8 (4) aggravated assault, as provided in
- 9 Section 30-3-2 NMSA 1978;
- 10 (5) assault with intent to commit a violent
- 11 felony, as provided in Section 30-3-3 NMSA 1978;
- 12 (6) aggravated battery, as provided in
- 13 Subsection C of Section 30-3-5 NMSA 1978;
- 14 (7) shooting at a dwelling or occupied
- 15 building or shooting at or from a motor vehicle, as provided
- 16 in Section 30-3-8 NMSA 1978;
- 17 (8) kidnapping, as provided in Section 30-4-1
- 18 NMSA 1978;
- 19 (9) dangerous use of explosives, as provided
- 20 in Section 30-7-5 NMSA 1978;
- 21 (10) criminal sexual penetration, as provided
- 22 in Section 30-9-11 NMSA 1978;
- 23 (11) criminal damage to property, as provided
- 24 in Section 30-15-1 NMSA 1978, when the damage to the property
- 25 amounts to more than one thousand dollars (\$1,000);

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1 (12) graffiti to real or personal property,
2 as provided in Subsection C of Section 30-15-1.1 NMSA 1978;

3 (13) larceny, as provided in Section 30-16-1
4 NMSA 1978, when the value of the property stolen is more than
5 two hundred fifty dollars (\$250);

6 (14) robbery, as provided in Section 30-16-2
7 NMSA 1978;

8 (15) burglary, as provided in Subsection A of
9 Section 30-16-3 NMSA 1978;

10 (16) aggravated burglary, as provided in
11 Section 30-16-4 NMSA 1978;

12 (17) arson, as provided in Section 30-17-5
13 NMSA 1978;

14 (18) aggravated arson, as provided in Section
15 30-17-6 NMSA 1978;

16 (19) bringing contraband into a prison or
17 bringing contraband into a jail, as provided in Section
18 30-22-14 NMSA 1978;

19 (20) possession of a deadly weapon or an
20 explosive by a prisoner, as provided in Section 30-22-16 NMSA
21 1978;

22 (21) assault by a prisoner, as provided in
23 Section 30-22-17 NMSA 1978;

24 (22) aggravated assault upon a peace officer,
25 as provided in Section 30-22-22 NMSA 1978;

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1 (23) aggravated battery upon a peace officer,
2 as provided in Subsection C of Section 30-22-25 NMSA 1978;

3 (24) bribery or intimidation of a witness or
4 retaliation against a witness, as provided in Section 30-24-3
5 NMSA 1978;

6 (25) any felony violation of the Controlled
7 Substances Act;

8 (26) attempt to commit one of the first,
9 second or third degree felonies set forth in Paragraphs (1)
10 through (25) of this subsection, as provided in Section
11 30-28-1 NMSA 1978;

12 (27) conspiracy to commit one of the felonies
13 set forth in Paragraphs (1) through (25) of this subsection,
14 as provided in Section 30-28-2 NMSA 1978; or

15 (28) criminal solicitation of another person
16 to commit one of the felonies set forth in Paragraphs (1)
17 through (25) of this subsection, as provided in Section
18 30-28-3 NMSA 1978. "

19 Section 4. A new section of the Criminal Code is enacted
20 to read:

21 "[NEW MATERIAL] INDUCEMENT OF MINORS TO PARTICIPATE IN A
22 PATTERN OF CRIMINAL GANG ACTIVITY--PENALTY. --A person who uses
23 threats, intimidation or persuasion to induce another person
24 less than eighteen years of age to participate in a pattern of
25 criminal gang activity is guilty of a third degree felony. "

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1 Section 5. A new section of the Criminal Code is enacted
2 to read:

3 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG--
4 ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL
5 LIMITED. --

6 A. When a felony, as described in Paragraphs (1)
7 through (28) of Subsection D of Section 3 of the Gang
8 Enforcement and Prevention Act, is a gang-related crime, and
9 committed with the intent to aid and abet a criminal gang with
10 a pattern of criminal gang activity, the basic sentence of
11 imprisonment prescribed for the offense in Section 31-18-15
12 NMSA 1978 shall be increased by two years in addition to any
13 other sentence provided for pursuant to the Habitual Criminal
14 Act. The sentence imposed pursuant to this subsection shall
15 be the first two years served and shall not be suspended,
16 deferred or conditionally discharged; provided that when the
17 offender is a serious youthful offender or a youthful
18 offender, the sentence imposed pursuant to this subsection may
19 be increased by two years.

20 B. When a second or subsequent felony, as
21 described in Paragraphs (1) through (28) of Subsection D of
22 Section 3 of the Gang Enforcement and Prevention Act, is a
23 gang-related crime and is committed with the intent to aid and
24 abet a criminal gang with a pattern of criminal gang activity,
25 the basic sentence of imprisonment prescribed for the offense

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1 in Section 31-18-15 NMSA 1978 shall be increased by four years
2 in addition to any other sentence provided for under the
3 Habitual Criminal Act. The sentence imposed pursuant to this
4 subsection shall be the first four years served and shall not
5 be suspended, deferred or conditionally discharged; provided
6 that when the offender is a serious youthful offender or a
7 youthful offender, the sentence imposed pursuant to this
8 subsection may be increased by four years.

9 C. If the case is tried before a jury and if a
10 prima facie case is established showing that the felony was
11 gang-related and committed with the intent to aid and abet a
12 criminal gang with a pattern of criminal gang activity, the
13 court shall submit the issue to the jury by special
14 interrogatory.

15 D. If the case is tried by the court and if a
16 prima facie case is established showing that the felony was
17 gang-related and committed with the intent to aid and abet a
18 criminal gang with a pattern of criminal gang activity, the
19 court shall decide the issue and shall make a separate finding
20 of fact thereon. "

21 Section 6. A new section of the Criminal Code is enacted
22 to read:

23 "[NEW MATERIAL] PARTICIPATION IN A CRIMINAL GANG-- DUTY OF
24 DISTRICT ATTORNEY TO PROSECUTE.-- If at any time, either after
25 sentence or conviction, it appears that a person convicted of

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1 a felony described in Paragraphs (1) through (28) of
2 Subsection D of Section 3 of the Gang Enforcement and
3 Prevention Act committed the gang-related felony while
4 engaging in a pattern of criminal gang activity, it is the
5 duty of the district attorney of the district in which the
6 present conviction was obtained to file an information
7 charging that person pursuant to the provisions of the Gang
8 Enforcement and Prevention Act. "

9 Section 7. EFFECTIVE DATE. --The effective date of the
10 provisions of this act is July 1, 1999.

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